

REMARKS

Claims 1-34 are pending in this application and are presented for examination. Claims 1 and 21 have been amended. All claims, including those unchanged by the current Amendment, are set forth in the Appendix for the Examiner's convenience. Reconsideration is respectfully requested.

THE INVENTION

The present invention provides an insect bait station that maximizes the number of edges that an insect such as a fly, can rest. Flies are attracted to a surface's edge and to baits that give off odors. The present invention relates to an insect trap for attracting and trapping an insect such as a fly, wherein the trap comprises a body having an external groove for supporting a pesticide. The pesticide is held in the external groove. In preferred embodiments, there are a plurality of external grooves on the body. In certain aspects, the external groove covers at least 30% of the total area of the external area of the body.

SUPPORT FOR CLAIM AMENDMENT

Support for the amendment to claim 1 is found throughout the specification as filed. More particularly, support is found, *inter alia*, on page 3, lines 12-13; page 5, line 9; and page 10, claim 33. In view of the foregoing support, Applicant believes no new matter has been introduced and respectfully request that the amendment be entered.

REJECTION UNDER 35 U.S.C. § 112, Second Paragraph

Claims 21 was rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. To the extent the rejection is applicable to the amended set of claims, Applicant respectfully traverses the rejection.

Claims 21 has been amended to delete the phrase the Examiner has found objectionable. In view of the amendment, Applicant respectfully requests that the Examiner withdraw the rejection.

REJECTION UNDER 35 U.S.C. § 102(b)

Claims 1, 12, 26-27, 31, 33-34 were rejected under 35 U.S.C. §102(b) as allegedly being anticipated by U.S. Patent No. 1,286,763 ("Pfeiffer"). The Examiner alleges that Pfeiffer shows an insect bait station having a body with an external groove. To the extent the rejection is applicable to the amended set of claims, Applicant respectfully traverses the rejection.

"To anticipate a claim, a reference must disclose every element of the challenged claim and enable one skilled in the art to make the anticipating subject matter" (*see, PPG Industries Inc. v. Guardian Industries Corp.*, 37 USPQ2d 1618, 1624 (Fed. Cir. 1996)).

Pfeiffer teaches "steps" with "troughs". As is clearly shown in Figures 6, 7 and 12 of Pfeiffer, the troughs (15) are similar to rain gutters that "hold" the insecticide. In Pfeiffer, the insecticide material is poured down the apex and the "troughs" with ledges retain the insecticides. (col 2, lines 87-96).

In stark contrast, the present invention provides an external groove that is not a trough with a ledge. The external groove is merely a groove that is able to support the insecticide because the insecticide is self-adhering. The pesticide sticks to the body due to its self-adhering nature.

As each and every element of the present claims is not found in the prior art reference, the claims are not anticipated. Therefore, Applicant respectfully requests that the Examiner withdraw the anticipation rejection.

REJECTION UNDER 35 U.S.C. 103(a)

Claims 2-11, 13-25, 28-30, and 32 were rejected under 35 U.S.C. §103(a) as allegedly being obvious over Pfeiffer, and further in view of U.S. Patent No. 4,671,010 ("Conlee"). The Examiner states that Conlee teaches a cylindrical body and that it would be obvious to substitute the cylindrical body of Conlee for the body of Pfeiffer. To the extent the rejection is applicable to the amended set of claims, Applicant respectfully traverses the rejection.

As set forth in M.P.E.P. § 2143, “[t]o establish a *prima facie* case of obviousness, *three* basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).”

All three elements set forth above must be present in order to establish a *prima facie* case of obviousness. Applicant asserts that a *prima facie* case of obviousness has not been established for the following reasons: 1) there is no suggestion or motivation to modify the references; 2) there is no reasonable expectation of success; and 3) the cited art references do not teach or suggest all the claim limitations.

1. There is no Suggestion or Motivation to Modify the References

Applicant states that there is simply no motivation or suggestion provided in the cited references to modify their teaching in the way the Examiner has contemplated. Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

As previously discussed, the “grooves” of Pfeiffer are really “steps” with “troughs”. As is clearly shown in Figures 6, 7 and 12 of Pfeiffer, the troughs (15) are similar to rain gutters that “hold” the insecticide. In Pfeiffer, the insecticide material is poured down the apex and the “troughs” with ledges retain insecticide. (col 2, lines 87-96). There is no teaching or suggestion of a groove to support a pesticide that is self-adhering.

The secondary reference of Conlee does not supply the teaching that is clearly lacking in Pfeiffer. Even if the body of Conlee were combined with the teaching of Pfeiffer, a

skilled person would not arrive at the present invention, because the present invention teaches "grooves", whereas Pfeiffer teaches steps with troughs similar to a rain gutter.

Thus, there is no incentive to combine the prior art references. As obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so, a *prima facie* obviousness rejection is untenable. Therefore, in view of the amendments to the claim, Applicant respectfully requests that the Examiner withdraw the rejection.

NO MOTIVATION TO MAKE THE MODIFICATION

If a proposal for modifying the cited art in an effort to attain the claimed invention causes the art to become inoperable or destroys its intending purpose, then the requisite motivation to make the modification would not have existed. (*see, In re Fritch*, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992).

The present invention teaches a "groove" that is able to support a self-adhering pesticide. If the troughs of Pfeiffer were to be modified to a groove of the present invention, the device of Pfeiffer would simply no work. The modification the Examiner contemplates would destroy the intended purpose of Pfeiffer. A self-adhering insecticide is not taught in Pfeiffer. Thus, the insecticide of Pfeiffer would not be supported. Therefore, in view of the amendments to the claim, Applicant respectfully requests that the Examiner withdraw the rejection.

2. There is No Reasonable Expectation of Success

In addition, there is no reasonable expectation of success that the modification that the Examiner contemplates will succeed. "Both the suggestion and the expectation of success must be found in the prior art, not the Applicants' disclosure." *In re Dow Chem. Co.*, 5 U.S.P.Q.2d 1529, 1532 (Fed. Cir. 1988).

Applicant asserts that there is absolutely no teaching or suggestion in the cited art to modify the teaching therein to arrive at the presently claimed invention. Rather, the Examiner has used the Applicants' disclosure as a blueprint to pick and choose features from the prior art in an attempt to reconstruct the presently claimed invention.

There is no reasonable expectation that the modification that the Examiner contemplates will succeed. Pfeiffer teaches "steps" with "troughs" that are similar to rain gutters that "hold" the insecticide. In Pfeiffer, the insecticide material is poured down the apex and the "troughs" with ledges retain the insecticides. Pfeiffer does not teach or suggest the use of a groove that is able to support a self-adhering insecticide. Thus, the Examiner has used hindsight reconstruction of the cited art in an attempt to piece together the present invention. Hindsight reconstruction is impermissible and therefore, Applicant respectfully request that the Examiner withdraw the rejection.

3. The Cited Art References Do Not Teach All Limitations of the Claims

The prior art references must teach or suggest all the limitations of the claims. *In re Wilson*, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970). Applicants assert that the prior art references do not teach or suggest all the limitations of the claims and therefore, the obviousness rejection is untenable.

The present invention provides an external groove that is not a trough with a ledge as taught in the prior art. The external groove is merely a groove that is able to support the insecticide because the insecticide is self-adhering. The pesticide sticks to the body due to its self-adhering nature. Under *In re Wilson supra*, a *prima facie* case of obviousness has not been established because each of the limitation of the claims is not taught or suggested in the cited art references. Therefore, Applicant respectfully requests that the Examiner withdraw the rejection.

CONCLUSION

In view of the foregoing amendments and remarks, Applicant believes all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

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Application No.: 09/441,035
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PATENT

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 415-576-0200.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Joseph R. Snyder".

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APPENDIX

- Sub B1
1. (Once Amended) An insect bait station for attracting and killing an insect, said insect station comprising:
a body having an external groove for supporting a self-adhering pesticide.
- Sub D2
2. The insect bait station according to claim 1, wherein said body is cylindrical or sperical.
3. The insect bait station according to claim 2, wherein said body comprises a cylinder.
4. The insect bait station according to claim 3, wherein said groove is elongated.
5. The insect bait station according to claim 3, wherein said groove extends generally longitudinally along the length of said cylinder body.
6. The insect bait station according to claim 3, wherein said groove has a spiral slope.
7. The insect bait station according to claim 4, wherein the height of said groove is at least two times larger than the width of said groove.
8. The insect bait station according to claim 3, wherein said body has a plurality of grooves.
9. The insect bait station according to claim 3, wherein said cylinder has a diameter of between about 1/4 inch to about 2 inches.
10. The insect bait station according to claim 3, wherein said cylinder is between about 6 inches to about 18 inches in length.
- Cont.

1 11. ~~B~~ The insect bait station according to claim 3, wherein said groove is
2 circumferential.

1 12. The insect bait station according to claim 1, further comprising a hanger
2 member connected to said body.

1 13. The insect bait station according to claim 1, wherein said body is
2 extrusion molded.

1 ~~Sub B3~~ 14. The insect bait station according to claim 1, wherein said body is
2 injected molded.

1 15. The insect bait station according to claim 3, further comprising a
2 pesticide disposed in the external groove wherein said pesticide is a viscous liquid or solid
3 formulation.

1 ~~Sub B3~~ 16. The insect bait station according to claim 15, wherein said pesticide is a
2 fast acting insecticide.

1 17. The insect bait station according to claim 15, wherein said pesticide is a
2 member selected from the group consisting of nitromethylene and phenyl pyrazole.

1 18. The insect bait station according to claim 15, wherein said pesticide
2 sticks to said body under the force of gravity.

1 19. The insect bait station according to claim 17, wherein said insecticide is
2 a fast acting insecticide.

1 20. The insect bait station according to claim 1, further comprising a pest
2 attractant reservoir connected to said body.

1 21. (Once Amended) The insect bait station according to claim 20, wherein
2 said body has a top portion and a bottom portion, said pest attractant reservoir being affixed to
3 said bottom portion.

1 22. The insect bait station according to claim 20, wherein said pest attractant
2 reservoir being affixed to said hanger member.

1 23. The insect bait station according to claim 20, wherein said pest attractant
2 is an insect pheromone.

1 24. The insect bait station according to claim 20, wherein said pest attractant
2 is a feeding attractant.

1 25. The insect bait station according to claim 1, further comprising a
2 cylinder sheath.

1 26. The insect bait station according to claim 1, wherein said pesticide is
2 formulated to kill *Musca domestica*.

1 27. An insect bait station for killing *Musca domestica*, said station
2 comprising:

3 a body having an external surface oriented generally vertically, said external
4 surface comprising at least one groove configured to support a pesticide of a viscous liquid or
5 solid formulation so that said pesticide is exposed to said external surface of said body.

1 28. The insect bait station according to claim 27, wherein said external
2 surface of said body comprises a plurality of generally vertical grooves.

1 29. The insect bait station according to claim 27, wherein said body is
2 generally cylindrical.

1 30. The insect bait station according to claim 27, wherein said at least one
2 groove covers an area of the external surface equal to at least about 30% of the total area of
3 said external surface.

1 31. An insect bait station comprising:

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- "Sub 105" written near claim 27.
- "Sub 82" written near claim 31.

2 a body including a continuous external surface having at least one external
3 groove for supporting a pesticide, said at least one external groove exposing said pesticide to
4 said external surface of said body and providing one or more edges for insects to land on or
5 near said pesticide.

1 32. The insect bait station according to claim 31, wherein said body is
2 generally cylindrical.

1 33. A method for killing an insect, said method comprising:
2 providing a station body having at least one external groove on an external
3 surface to provide one or more edges for said insect to land; and
4 applying a self-adhering pesticide on said external groove to expose said
5 pesticide to said external surface and place said pesticide at or near said one or more edges.

6 34. The method according to claim 33, wherein said insect is a fly.